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Supreme Court, U.S.
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No. 93-1980

In The

Supreme Court of the United States

October Term, 1994

JAMES H. STANTON, WINNIFRED STANTON, and their marital community, and ALBANY INSURANCE COMPANY, et al.,

Petitioners,

v.

BAYLINER MARINE CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

FIRST SUPPLEMENTAL BRIEF IN OPPOSITION OF BAYLINER MARINE CORPORATION

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NEW AUTHORITY

Two additional opinions have applied the economic loss rule of *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986) to recreational vessels.

In *Somerset Marine, Inc. v. Forespar Products Corporation*, 1994 A.M.C. 1577 (C.D. Cal. 1994) a yacht's mast broke, resulting in $100,000 in damages. Suit was brought by the subrogated insurance carrier. The *Somerset* court granted a defense motion for summary judgment holding that the *East River* rule, barring recovery for a product's damage to itself, applies both to commercial and recreational vessels.

The California Court of Appeals in *Lewinter v. Genmar Industries, Inc.*, ___ Cal. Rptr. 2d ___, 1994 W.L. 380705 (Cal. App. 2 Dist. 1994) affirmed a summary judgment for the defendant manufacturer of a 61-foot motor yacht, based on the application of the *East River* rule. The subject opinion, *Stanton v. Bayliner Marine Corp.*, 123 Wn.2d 64, 866 P.2d 15 (Wash. 1993) A-24-77, was cited along with *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982) and *Karshan v. Mattituck Inlet Marina and Shipyard, Inc.*, 785 F. Supp. 363 (E.D.N.Y. 1992), for the holding that the "*East River* doctrine is equally applicable to commercial and consumer situations." *Lewinter*, 1994 W.L. 380705 at p.4. The underlying *Lewinter* trial court decision had been reported in American Maritime Cases, *Lewinter v. Genmar Industries, Inc.*, 1993 A.M.C. 939 (Cal. Super. Ct. 1993), and was relied upon several times in the subject *Bayliner* opinion. A-48, A-49, A-52.

Though the subject Washington Supreme Court opinion remains the only decision by the highest court of a

state or a federal appellate court to directly address the application of *East River* to recreational vessels, *Somerset* and *Lewinter* are further persuasive authority that the rationale adopted by this Court in *East River* should apply in a non-commercial maritime context.

Respectfully submitted,

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